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PATENT
Attorney Docket No. 11016.02
Express Mail Label No. EV 156-970 485 US

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

CLAYCOMB, et al.

Serial No. 09/470,116

Filed: December 22, 1999

For: ELECTRONIC ESTRUS DETECTION
DEVICE

Examiner: N. Natnithithadha

Art Unit: 3736

Mail Stop Petitions
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PETITION TO REVIVE UNAVOIDABLY ABANDONED APPLICATION
PURSUANT TO 37 C.F.R. § 1.137(A)

The Applicant respectfully requests that the Commissioner withdraw the holding of abandonment in the above-identified application. The abandonment by the Applicant was unavoidable as explained below.

The above-identified application became abandoned for failure to file a timely and proper response to a notice or action by the Patent and Trademark Office. The notice of abandonment states that the case went abandoned February 12, 2003. The last communication was an Interview Summary completed by the Examiner and mailed on August 27, 2002 indicating that the Examiner planned on performing an additional search to determine the patentability of the subject matter.

03/01/2003 SLUANG1 00000075 09470116
01 FC:2452 55.00 DP
08/22/2003 AKELLEY 00000023 041415 09470116
01 FC:2453 650.00 DA

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OFFICE OF PETITIONS

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1. United States Utility Patent Application Serial No. 09/470,116 ("the '116 application") was filed on December 22, 1999, claiming priority to provisional application USSN 60/113,202, filed December 22, 1998.

2. An Office action was mailed by the United States Patent and Trademark Office on November 5, 2002, wherein the Examiner rejected all the claims of the '116 application (claims 1-21) under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,542,431.

3. Robert J. Scheffel, a former associate of Dorsey & Whitney LLP, contacted the Examiner on or about January 24, 2002 to discuss the rejections in the Office action of November 5, 2002. See Affidavit of Robert J. Scheffel Applicant's Attorney, attached as Exhibit A.

4. On or about January 25, 2002, the Examiner forwarded an Interview Summary (attached as Exhibit B) confirming the substance of the January 24, 2002 interview and stating that a search will be needed based on the discussion, and that the next Office action will include the PTO-1449 form.

5. Based on this interview, it appeared that the first Office action had been adequately addressed and that the Examiner would be issuing a new Office action once a search was completed. Mr. Scheffel was only required to forward a new power of attorney, which he submitted via facsimile on or about January 25, 2002.

6. Mr. Scheffel instructed Dorsey & Whitney's Senior Docket Specialist, Jo Howell, that there was no response needed to the Interview Summary submitted by the United States Patent and Trademark Office on January 25, 2002. See Affidavit of Jo Howell Senior Docketing Specialist for Dorsey & Whitney LLP, attached as Exhibit C.

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7. The applicant respectfully submits that this Petition, together with its exhibits, demonstrates how the abandoned status of the application occurred despite the exercise of due care of diligence on the part of the applicant and was thus unavoidable. The Applicant also respectfully submits that this Petition demonstrates that the error in not responding to the Office action, dated November 5, 2002, and subsequently thereafter when this case went abandoned, was unavoidable. Accordingly, reinstatement of the application is requested. However, if the demonstration that the abandonment was not unavoidable, the Applicant hereby petitions that the exhibits show that the abandonment was at the very least unintentional.

8. Pursuant to 37 C.F.R. § 1.17(1), a check for \$55.00 is enclosed. If any additional fees are deemed necessary, such as the fee for unintentionally abandonment in the amount of \$650.00, such fees may be charged to Deposit Account No. 04-1415.

Dated: July 29, 2003

Respectfully submitted,



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